



# M E M O R A N D U M

## DEPARTMENT OF GAME AND FISH

March 31, 2004

TO: Commissioned Officers

FROM: Dan Brooks

SUBJECT: Seizure of Raptor Feathers and Parts

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This is to provide clarification of enforcement authority and seizure to all Department officers with respect of raptor feathers and parts for violations of 17-2-14 NMSA 1978. This will also clarify officers' duties under the Department's agreement with the US Fish and Wildlife Service Memorandum of Agreement (MOA) regarding the seizure of raptor feathers for federal cases.

Statute 17-2-14.A addresses the Department's authority when dealing with birds of the order Falconiformes and Stingiformes. The statute states:

*It is unlawful for any person to take, attempt to take, possess, trap or ensnare or in any manner injure, maim or destroy birds of the order Falconiformes, comprising all of the species and varieties of birds represented by several families of vultures and hawks, and all of the order Stingiformes, comprising all of the species and varieties of owls. It is also unlawful to purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of these birds.*

Prior to 1992, the statutory language specifically exempted the families of Bald and Golden Eagles. However, with the specific removal of this language, it is clear the legislative intent was to extend this protection to eagles.

This state law specifically makes it illegal to harm the birds listed in these categories as it relates to the "whole" bird; or the possession of parts of the protected raptors when they are purchased, sold, traded or bartered. This legislation does not make "simple" possession of parts (feathers, talons, etc.) unlawful. If a person simply found a feather and kept it with no intention of selling or trading it, then there is no "State" violation.

Obviously, if a person has the whole bird, whether dead or alive, that person is subject to prosecution under 17-2-14. If a person has feathers or other raptor parts that the officer can prove are possessed for sale, trade or barter or have been purchased by the person, the parts may be seized as evidence and the person prosecuted under the same statute. This

statute no longer applies to vultures because they are no longer classified in the order Falconiformes. They have been reclassified to the order Ciconiiformes and without an amendment to the statute will remain outside of the scope of this law.

In the past, Department officers may have seized raptor feathers or other raptor parts using the authority we are granted under the State law previously discussed or under federal authority as it exists in the MOA. However, one of the conditions for allowing Department officers to exercise federal authority is that no Department officer will initiate any investigation into activities that are solely violations of federal law without the concurrence of the USFWS.

At this time, you are not to seize “found” raptor or migratory bird feathers unless the elements of purchasing, selling or trading are met. Instead the Department is promoting cooperative compliance by letting people know raptor feather possession is illegal under federal law, specifically the Migratory Bird Treaty Act 16 USC 703/705, 50 CFR Parts 20, 21 and 22, and the Bald and Golden Eagle Protection Act, 16 USC 668d. Officers may inform anyone in possession of such items that it is a violation of federal law and that it would be in their best interest to dispose of the item(s). Again, these items are not to be seized unless 17-2-14 applies. An officer may seize any feathers or other raptor parts if they are evidence of a crime for 17-2-14 or under the direct guidance of a US Fish and Wildlife Special Agent and in conjunction with our MOA.

Please contact the Law Enforcement Division with any questions or if you need more clarification on this issue.

ex: Tom Karabanoff, USFWS  
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DB/LMS/db